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10/577,090	01/19/2007	Tobias Fackler	100728-53-WCG	4311

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EXAMINER
NELSON, MICHAEL B

ART UNIT	PAPER NUMBER
1794	

MAIL DATE	DELIVERY MODE
06/24/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed on 06/18/09 have been considered but are not persuasive. Also, applicant's remarks related to the additional pages added to the specification are being addressed and the examiner will contact the attorney if any problems arise in resolving the issue.

2. Regarding applicant's arguments against surface layer limitations, the examiner notes that in Fig. 1d of Hanada et al., from top to bottom, the first layer, instant layer A, is an outer layer, and the last layer, instant layer G, is another exposed surface layer. Hence the prior art's layer stack reads on the instant order of layers.

3. Regarding applicant's arguments that the amount of filler renders the bottom non-foamed layer non-heat sealable or peelable, the examiner does not find any evidence to show that the layer would be **completely** non heat sealable and even if it were not sealable it would still be peelable. The examiner notes that several properties are ascribed to layer B, (i.e. not a surface layer and contains no filler) without any corresponding limitation being found in the instant claims.

4. Applicant argues that the thickness ratios of 100:1 and 100:30 do not read on the instant 6:1 and 2:1 however the disclosed ranges convert to 100:1 and 3.3:1 which fall within the instant claimed range. While the thickness ratio is applied to the foamed layer and the non-foamed layer of the embodiment shown in Fig. 1a, in Fig. 1d, the stack of Fig. 1a is described as being combined with other layer ([0064]) and therefore the thickness ratios of the A and B layers would still apply.

5. Regarding applicant's allegation that the two combined references are not related art, the examiner disagrees. The two resins used in the prior art references are both polyolefins and are therefore related. More to the point, the amount of foaming agent would affect the cell creation and therefore would be applicable to a wide variety of foamable resins (although as explained above the two resins are in fact related). The fact that Hatke et al. does not disclose the other layers in the stack is irrelevant since these layers are disclosed in Hanada et al. Applicant attempts to distinguish between filler particles and foaming agents however, the prior art shows that filler particles can be used as foaming agents and would therefore inherently posses the dual functionality as instantly described.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL B. NELSON whose telephone number is (571) 270-3877. The examiner can normally be reached on Monday through Thursday 6AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on (571) 272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David R. Sample/
Supervisory Patent Examiner, Art Unit 1794

/MN/
06/22/09